IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

Crl.MC.No. 2572 of 2006()

AGAINST THE ORDER DATED 08/08/2006 IN CMP.3186/06 IN CC.2337/2003 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI

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PETITIONER/ACCUSED:

SAGAR KUMAR, S/O.N.RAJAN,
AGED 55 YEARS, KAREETHRA VEEDU,
SIMIO BHAVAN, UDAYANAPURAM, VADIKKAMUR,
VAIKOM.

BY ADV. SRI.M.P.KRISHNAN NAIR
SRI.V.B.NARAYANAN

RESPONDENTS: COMPLAINANT

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1. A.P.JOHN, ANTHIKKADU VEEDU,
H.NO.34/583, PADIVATTOM, EDAPPALLY,
KOCHI-24, (DECEASED).

2. JOLLY.A.J., S/O.A.P.JOHN,
ANTHIKKADU VEEDU, H.NO.34/583, PADIVATTOM,
EDAPPALLY, KOCHI-24.

BY ADV. SRI.C.ANILKUMAR (KALLESSERIL)
PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 27/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2572 of 2006

Dated this the 27th day of November 2006

O R D E R

The petitioner is an accused in a prosecution under Section 138 of the Negotiable Instruments Act. The cheque is for an amount of Rs.2,72,000/-. To the notice of demand, prompt reply was given by the petitioner wherein it was admitted that blank cheques were handed over and it was contended that one of those cheques was misused for staking the false claim. The petitioner filed an application to direct the respondent to produce certain documents. The learned Magistrate, by the impugned order, accepting the production of document no.4 dismissed the prayer in so far as it related to the prayer for production of documents 1 to 3, i.e. account book maintained by the complainant during 2001, income tax return for the year 2001-2002 and the bank pass book of the complainant. The learned counsel for the petitioner submits that the petitioner has got the burden to rebut the presumption under Section 139 of the N.I.Act and in a case like the instant one, the petitioner can seek to discharge his burden only by calling for the relevant records on the complainant. The learned counsel for the petitioner points out that the complainant in his objections has not raised the contention that

these documents are not available in his possession.

3. Having considered all the relevant inputs, I am certainly of the opinion that the request made by the petitioner/accused cannot be held to be not justified in the facts and circumstances of this case. The petitioner/accused has the burden to rebut the presumption under Section 139 of the N.I.Act and the documents which he called for cannot be said to be irrelevant while considering his purpose - discharging the burden on him under Section 139 of the N.I.Act.

4. I am in these circumstances satisfied that this is an eminently fit case where in the interests of justice, directions under Section 482 Cr.P.C can be issued in favour of the petitioner.

5. In the result,

a) This Crl.M.C is allowed.

b) The impugned order is set aside.

c) The complainant/respondent is directed to produce the documents or file necessary affidavit within a period of thirty days from this date before the court below.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006